

278.5464 Provision of broadband service to unserved and underserved households and businesses -- Facilitation by distribution cooperative.

- (1) The General Assembly recognizes and declares:
 - (a) The provision of broadband service to residential, commercial, and industrial customers is critical to securing a sound economy and promoting the general welfare of the Commonwealth; and
 - (b) Distribution cooperatives are able to access and leverage federal funding to extend and enhance the availability of broadband service to Kentucky residents who are currently unserved or underserved.
- (2) As used in this section:
 - (a) "Broadband" means any wireline, fixed wireless, or fixed terrestrial technology having a capacity to transmit data from or to the Internet with a minimum speed of twenty-five (25) megabits per second downstream and three (3) megabits per second upstream as defined by the Federal Communications Commission or the United States Department of Agriculture and any amendments to those definitions. If the agencies use different speed definitions, the faster speed definition shall apply;
 - (b) "Underserved area" means any project area where broadband service with a minimum twenty-five (25) megabits per second downstream and three (3) megabits per second upstream is not available; and
 - (c) "Unserved area" means any project area where broadband service with a minimum ten (10) megabits per second downstream and one (1) megabit per second upstream is not available.
- (3) Notwithstanding any other statute to the contrary:
 - (a) A distribution cooperative may facilitate the operation of an affiliate engaged exclusively in the provision of broadband service to unserved or underserved households and businesses by:
 1. Leasing excess capacity on any fiber optic cable used to support the distribution cooperative's distribution system;
 2. Issuing securities or evidences of indebtedness in an amount not to exceed twenty-five percent (25%) of the net book value of its assets, the proceeds of which shall be used for the exclusive purpose of capitalizing the affiliate; or
 3. Pledging up to twenty-five percent (25%) of the net book value of its assets as collateral for a loan entered into by the affiliate for the purpose of providing broadband services; and
 - (b) The commission shall grant approval of the leasing of excess capacity, the issuing of securities or evidences of indebtedness, or the pledging of assets upon a finding the proposal is in the public interest.
- (4) The commission shall take into consideration the policy of encouraging the provision of broadband service to unserved or underserved households and businesses throughout the Commonwealth when determining whether:

- (a) The proposed investment will result in wasteful duplication of investment in the case of any distribution cooperative's application for a certificate of public convenience and necessity under KRS 278.020 that includes the construction of a fiber optic cable system with capacity in excess of that which is necessary to support the distribution cooperative's system under subsection (3)(a)1. of this section; and
 - (b) The issuance or assumption of securities or evidence of indebtedness satisfies the criteria of KRS 278.300(3) in the case of any distribution cooperative's application for approval of an issuance of securities or evidence of indebtedness or pledge of assets under subsection (3)(a)2. and 3. of this section.
- (5) A distribution cooperative shall comply with the cost allocation requirements of:
- (a) KRS 278.2201, 278.2203, 278.2205, 278.2207, 278.2209, and 278.2211; and
 - (b) Only KRS 278.2213(1) and (3) with regard to any costs associated with its facilitation of an affiliate's provision of broadband services.
- (6) Prior to December 31, 2021, the commission shall promulgate administrative regulations regarding pole attachments under the commission's jurisdiction, including those necessary for the provision of broadband service.

Effective: June 29, 2021

History: Created 2021 Ky. Acts ch. 171, sec. 1, effective June 29, 2021; and amended ch. 196, sec. 4, effective April 7, 2021.

Legislative Research Commission Note (6/29/2021). This statute was created by 2021 Ky. Acts ch. 171, sec. 1, which was effective June 29, 2021, but its provisions were then amended during the same session by 2021 Ky. Acts ch. 196, sec. 4, which was effective April 7, 2021. Since the statute technically could not be amended April 7, 2021, when Chapter 196 took effect, since its creation was not effective until June 29, 2021, pursuant to Chapter 171, the amendment will be given effect on June 29, 2021, when the created statute is effective.